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Michael G. Martinek

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EXAMINER

LEIVA, FRANK M

ART UNIT

PAPER NUMBER

3714

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/520,405	Applicant(s) MARTINEK ET AL.	
	Examiner FRANK M. LEIVA	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-70, 74-76 and 78-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-70, 74-76 and 78-81 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/08/2008; 10/09/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. The examiner acknowledges receipt of applicant's submission filed 08 October 2008 in which claims 1-57, 71-73 and 77 are canceled, remaining claims 58-70 and 78 are still pending, independent claims 58 and 76 are amended and claims 79-81 are newly added.

Response to Arguments

2. Applicant's arguments filed 08 October 2008 with regards of claims 58 and 76 are drawn to the amended matter and will be responded below, and the IDS forms are being acknowledged with this action. As to applicant's request for clarification of "Application Program Interface (API) and "gaming terminal controller board"; Specifications call for a Sound API or User API which is only a peripheral controller called to work by the controller program housed in the board. According to Wells the control board interfaces (communicates) with numerous boards with numerous functions, see Wells column 5 lines 4-23.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 58-71, 74-76 and 78-81 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over new claims 1-17 of copending Application No. **11/932752** filed 31 October 2007. Although the conflicting claims are not identical, they are not patentably distinct from each other because when claims in one application are so close in content to claims in another application that they both cover the same subject matter, despite a slight different in wording, it is proper to apply obvious-type double patenting. The claims of co-pending Application No. 11/932752 recite *"A universal operating system stored in a memory of a computerized controller comprising a processor with said memory and the operating system stored in said memory, the controller further comprising a operating state storage, a nonvolatile storage, the computerized controller being operable to control at least one computerized wagering game, the operating system comprising: an operating system kernel and a system handler application, the operating system kernel and system handler application operable to dynamically link with a plurality of program shared objects and device handlers and load said program shared objects and device handlers, wherein said plurality of program shared objects can be effectively shared between two or more computerized wagering games; the system handler application further comprising an event queue; the system handler application further comprising an Application Program Interface (API) comprising functions callable from*

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the program shared objects, the Application Program Interface comprising a plurality of operating functions callable by and used by said plurality of said program shared objects; the device handlers accessing a look-up table in the operating state storage for the data variables stored in the nonvolatile storage”, which is considered to be equivalent, despite the slight difference in wording.

Thus, claims 58-70, 74-76 and 78-81 of the instant application are considered to be similar, if not identical, to claims 1-17 of co-pending Application No. 11/932752. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

1. Claims 58-70, 74-76 and 78-81 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of U.S.

Patent No. 7,470,182 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both are drawn to “*A universal operating system stored in a memory of a computerized controller comprising a processor with said memory and the operating system stored in said memory, the controller further comprising a operating state storage, a nonvolatile storage, the computerized controller being operable to control at least one computerized wagering game, the operating system comprising: an operating system kernel and a system handler application, the operating system kernel and system handler application operable to dynamically link with a plurality of program shared objects and device handlers and load said program shared objects and device handlers, wherein said plurality of program shared objects can be effectively shared between two or more computerized wagering games; the system handler application further comprising an event queue; the system handler application further comprising an Application Program Interface (API) comprising functions callable from the program shared objects, the Application Program Interface comprising a plurality of operating functions callable by and used by said plurality of said program shared objects; the device handlers accessing a look-up table in the operating state storage for the data variables stored in the nonvolatile storage; the system handler application operable to- initiate execution of a computerized wagering game based on data variables stored in the*

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nonvolatile storage; write data variables to the nonvolatile storage when said computerized wagering game is executed".

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 58-70, 74-76 and 78-80 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wells et al. (US 6,805,634 B1).**

7. **Regarding claim 58;** Wells discloses:

A computerized wagering game apparatus, comprising; a computerized game controller comprising a processor with a memory and an operating system stored in said memory, the controller further comprising a game state storage, a nonvolatile storage, the computerized game controller being operable to control a computerized wagering game, (4:49-65).

An operating system that runs on the computerized game controller, the operating system comprising an operating system kernel and a system handler application, the operating system kernel and system handler application operable to dynamically link with a plurality of gaming program shared objects and device handlers for the computerized wagering game at run time when the computerized wagering game is executed in a manner that allows the plurality of gaming program objects to call a set

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of common functions effectively provided by the system handler application when the system handler application is executed and load said gaming program shared objects and device handlers, (1:33-41), discloses to add new features, implementing new games... new software is transferred or “downloaded”, and (4:8-21), more specific details.

The system handler application comprising an Application Program Interface comprising functions callable from the gaming program shared objects, the Application Program Interface comprising a plurality of gaming functions callable by and used by the plurality of the gaming program shared objects, (4:1-7).

The system handler application operable to; initiate execution of a computerized wagering game based on game data variables stored in the nonvolatile storage; write game data variables to at least one of the game state storage and nonvolatile storage when the computerized wagering game is executed; and load at least one of the plurality of the gaming program shared objects in response to a change in the stored game data variables by at least another one of the plurality of the gaming program shared objects, (1:16-29), the plurality of functions stored in the computerized game controller;

The game state storage including a look-up table for the data variables stored in the nonvolatile storage, (2:1-20), wherein it is well known to have look-up tables or menus in machines from well before the IGT Game King product line circa 1996, for the purpose of selecting hardware and payable configurations.

Wells is silent to the use of the term “operating system”, but by definition and inherent to Wells invention is the programming of the Game Controller Board which executes all the defined functions of an operating system. It is perhaps viewed by the examiner that the operating system is inherent in Wells, but in any case is most surely obvious to one of average skill in the art that an operating system software has been placed in the Game Controller Board in order to execute all the functions described by Wells.

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8. Regarding claim 59; Wells discloses wherein the system handler application further comprises an event handler, (fig. 5).

9. Regarding claim 60; Wells discloses wherein the system handler application comprises software having the ability when executed to:
unload a previous gaming program shared object or device handler if a previous object or device handler has been loaded; load a new gaming program shared object or device handler; and execute the new gaming program shared object or device handler, (fig. 2 & description).

10. Regarding claim 61; Wells discloses wherein data variables modified by the gaming program shared objects are stored by the system handler application in the nonvolatile storage and a game state storage, and the system handler application functions to verify that the operating system or code for a shared object has not changed, (8:36-67), wherein the information is double checked by the system to be compatible and approved for the jurisdiction, and that if it is determined that the current version is correct, the download can be skipped.

11. Regarding claim 62; Wells discloses wherein the game state storage provides a variable name index to associated variable data locations within the nonvolatile storage, (8:36-67), program ids and CRC verification numbers.

12. Regarding claim 63; Wells discloses wherein changing a data variable in nonvolatile storage causes execution of a corresponding callback function in one of the gaming program shared objects of the system handler application. It is well known to create a reset subroutine to load all new data variables such as paytables and Jackpot Level changes into the proper register locations and restart game functions with new values.

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13. Regarding claim 64; Wells discloses wherein the computerized game controller comprises an IBM PC-compatible computer. It is well known in the industry to use Intel processors in the machines MPU boards as part of modern gaming architecture and to improve communication with standard peripherals, Intel chip have been in use on IBM compatible machines since their conception.

14. Regarding claim 65; Wells discloses wherein the operating system kernel is a Linux operating system kernel. It is well known to use Linux operating system; the earliest this examiner recalls is the old Yahtzee and Battleship games by Mikohn/Sigma.

15. Regarding claim 66; Wells discloses wherein the Linux operating system kernel has at least one selected device handler disabled, whereas it is well known to have a list of device handlers or “drivers” for the same product and to disable all non-available devices during installation.

16. Regarding claim 67; Wells discloses wherein the at least one selected device handler that is disabled is selected from the group consisting of a keyboard handler, an I/O port handler, a network interface handler, a storage device controller handler, and a I/O device handler, as stated above for claim 66, it is well known to have a selection of possible I/O devices such as touchscreen drivers, bill validator drivers and printer drivers, and to disable all non-used equipment so that the operating system is not looking for them.

17. Regarding claim 68; Wells discloses wherein the system handler application and the operating system kernel work in communication to hash system handler application code and operating system kernel code, it is well known that the virtue of a network system is to allow communication across all systems if necessary.

18. Regarding claim 69; Wells discloses wherein the operating system is controlled by a general-purpose computer and the nonvolatile storage stores program variables,

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such that loss of power does not result in loss of the state of the computerized wagering game system, and the system handler application loads a first shared object and the first shared object calls up a gaming function from within an Application Program Interface, It is well known to use Intel processors which are general purpose computer processors in gaming machines, and to maintain EEPROM and battery backup systems to save game data in the event of power failure, a common occurrence in casino environments.

19. Regarding claim 70; Wells discloses wherein the system application handler loads and executes a single shared object at any one time, and wherein the system application handler shares data with at least one other shared object upon execution of the at least one other shared object, (fig. 2 & 4:8-21), whereas in fig. 2 it establishes that the system is in communication with one game at a time, col. 4:8-21 explains that the system is programmed to continue to the next game in the group that is in idle for a specific length of time.

20. Regarding claim 74; Wells discloses wherein the wagering game comprises a plurality of segments each comprising a gaming program shared object, wherein the system handler is operable to dynamically change the wagering game from one of the plurality of segments to another of the plurality of segments in response to the change in the stored game data variables. It is well known to create a reset subroutine to load all new data variables such as paytables and Jackpot Levels and number of reels and paylines changes into the proper register locations and restart game functions with new values; this of course changes the game segments.

21. Regarding claim 75; Wells discloses wherein the system handler is operable to dynamically change the segment of the wagering game in response to a change in at least one of the device handlers, (8:36-67), wherein the system automatically checks and verifies authentication and will replace the device handlers if necessary.

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22. Regarding claims 76 and 78; Wells discloses a computer-implemented method with computer readable medium including computer program code of managing data for a computerized wagering game, comprising: executing an operating system on a computerized game controller, the operating system including an operating system kernel and a system handler application; initiating execution of the computerized wagering game; changing one or more game data variables stored in memory as a result of initiating the execution of the computerized wagering game on the computerized game controller, (fig. 3, and col. 4:49-65, 5:4-27 and 6:14-21), wherein any set of program instruction that call another program or schedules execution of program modules in consider an operating system;

loading a plurality of gaming program shared objects in response to the change to the one or more game data variables stored in the memory, wherein the plurality of gaming program shared objects can be used to call a set of common functions stored in the computerized game controller that can be used for execution of the computerized wagering game, (col. 5:4-27, 45-57), where the downloaded program functions are placed in the controller board and called by the boards operating software for execution;

linking the system handler application with the plurality of gaming program objects for the computerized wagering game at run time when the execution of the computerized wagering game is initiated and the plurality of gaming program objects are loaded, thereby dynamically linking the system handler application with the plurality of gaming program shared objects for the computerized wagering game at run time when the execution of the computerized wagering game is initiated in a manner that allows the plurality of gaming program objects to call the set of common functions effectively provided by the system handler application when the system handler application is executed, (col. 4:1-21), where the system being linked to the gaming terminal manages the transfer of the shared objects independently with each machine and during the wagering game is running it waits for a signal call to initiate transfer. Wells is silent to the use of the term "Operating System", but by definition and inherent to Wells invention is the programming of the Game Controller Board which executes all the defined functions of an operating system. It is perhaps viewed by the examiner that

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the operating system is inherent in Wells, but in any case is most surely obvious to one of average skill in the art that an Operating System software has been placed in the Game Controller Board in order to execute all the functions described by Wells.

23. Regarding claim 79; Wells discloses further comprising a housing that contains the computerized game controller, including the operating system, the system handler application and the plurality of functions, (fig. 1A:112a), where the gaming terminal housing a game controller board programmed to interface with several peripheral controller boards and execute several program functions.

24. Regarding claim 80; Wells discloses wherein the plurality of gaming program shared objects include a game object that executes to provide operation of a computerized wagering game, and a bonus object that executes to provide a bonus segment of play, (col. 11:2-4), where the game controller also includes bonus game programming executable by the game controller operating software.

25. Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wells et al (US 6,805,634 B1) in view of Mastera et al. (US 6,315,666 B1).

26. Regarding Wells in combination of Mastera the Mastera invention discloses a game with a bonus game feature as does Wells, making them analogous and obvious to combine.

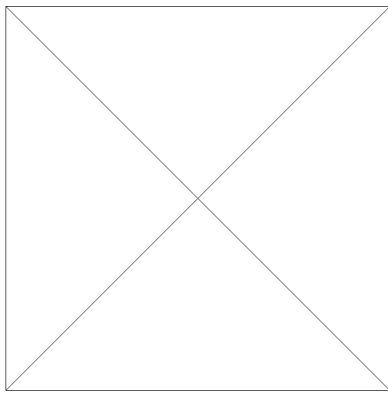
27. Regarding claim 81; Wells discloses all the limitations of claims 80 and 58 as applied above, yet is silent to the specifics of executing the bonus game; Mastera perhaps shows wherein the game object is unloaded and the bonus object is loaded upon changing from normal game operation to bonus operation, with relevant data for the game object and the bonus object stored in nonvolatile storage, (Mastera, col. 13:5-20), wherein the execution of a bonus game forces the system to load the bonus

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program into DRAM where all the subsystems will take their cues for creating of video images and sound generation. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the bonus game module of Wells, (Wells, col. 10:64-11:4), which is already separate from the base game, and loading it in the manner of Mastera by using fast DRAM for game execution. It is well-known in the art that due to the expense of fast DRAM memory, that the unused portion of game memory are kept into large PROMs, CDs, or large capacity media and that the programs are broken into segments or caches to move to DRAM when their use comes to play. Loading and unloading program modules from the active RAM are simple design choices with predictable results.

28. **Definitions:**

operating system – *noun* Computers. *The collection of software that directs a computer's operations, controlling and scheduling the execution of other programs, and managing storage, input/output, and communication resources.* Abbreviation: OS



kernel – *noun* Mathematics. *The set of elements that a given function from one set to a second set maps into the identity of the second set.*

<http://dictionary.reference.com/>

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29. Examiner's Note: Examiner has cited paragraphs and figures in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANK M. LEIVA whose telephone number is (571)272-2460. The examiner can normally be reached on M-Th 9:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter D. Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Peter D. Vo/

Supervisory Patent Examiner, Art Unit 3714